

BEFORE THE  
POSTAL REGULATORY COMMISSION

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PERIODIC REPORTING  
(PROPOSAL TWO)

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: Docket No. RM2016-10  
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UNITED PARCEL SERVICE, INC.'S MOTION FOR LEAVE  
TO FILE A RESPONSE TO THE POSTAL SERVICE'S  
OPPOSITION TO UPS'S MOTION FOR ACCESS  
(September 29, 2016)

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United Parcel Service, Inc. ("UPS") respectfully submits this Motion for Leave to File a Response to the Postal Service's Opposition to UPS's Motion for Access.

On September 23, 2016, UPS filed a Motion for Access ("Motion") seeking access for its outside counsel and consultants to the only library reference submitted by the Postal Service in support of Proposal Two: USPS-RM-2016-10/NP1. See United Parcel Service, Inc.'s Motion for Access, Dkt. No. RM2016-12 (Sept. 23, 2016). UPS pointed out that "[i]n support of Proposal Two, the Postal Service relies extensively and exclusively on non-public material filed under seal." *Id.* Without access to this non-public data, it "would not be possible for UPS's outside counsel and consultants (or anyone else) to begin to assess the impacts of Proposal Two." *Id.* The Postal Service, in its opposition, does not dispute this fact. Nor can it. There is simply no publicly available information upon which interested parties can rely in providing comments in response to Proposal Two.

The Postal Service nevertheless opposes allowing UPS to have access to this information, even under the most stringent protective conditions, claiming the

information contained in USPS-RM-2016-10/NP1 is of a "highly confidential" and "commercial nature." Response of the United States Postal Service to United Parcel Service Inc.'s Motion for Access at 2, Dkt. No. RM2016-10 (Sept. 28, 2016). But such assertions only highlight the appropriateness of the protective conditions to which UPS has already agreed; these claims cannot prevent access by interested parties altogether, under any conditions. See, e.g., *Sierra Club v. Costle*, 657 F.2d 298, 398 (D.C. Cir. 1981) ("If, however, documents of central importance upon which EPA intended to rely had been entered on the docket too late for any meaningful public comment prior to promulgation, then both the structure and spirit of section 307 would have been violated.").

As noted, UPS has voluntarily agreed to restrict access to these non-public materials to a limited number of *outside* consultants and experts—persons who have no role in making commercial decisions whatsoever. Despite this added protective measure, the Postal Service raises concerns about the possibility of inadvertent disclosure of non-public material. See Response of the United States Postal Service to United Parcel Service Inc.'s Motion for Access at 2, Dkt. No. RM2016-10 (Sept. 28, 2016) (UPS's "assurances do not protect against the potential for inadvertent disclosure that could arise any time the materials are replicated and saved outside the Postal Service's and Commission's files."). These generalized fears are overstated and cannot be used to block access to information that is indisputably necessary for interested parties to evaluate the proposal and file comments..

Indeed, UPS's outside consultants and experts executed the Standard Statement of Protective Conditions that is provided in 9 CFR Part 3007, Appendix A to Part 3007.

Should the Commission embrace the Postal Service's position that its Standard Statement of Protective Conditions is insufficient to protect against inadvertent disclosure of non-public material, it would be tantamount to disclaiming the utility of this document in general.

It is also important to note that UPS is not attempting to gather any customer-specific or revenue information, and is only petitioning for outside parties to review analytical principles for attributing and allocating costs for the delivery of international letter and parcel delivery. There are no specific confidentiality exclusions for data merely because it relates to the delivery of certain types of mail and parcels.

Accordingly, UPS declines the Postal Service's invitation to withdraw its Motion for Access.

Respectfully submitted,

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